IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 316 of 2005

with

SPECIAL CIVIL APPLICATION No 317 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAKESH SHANTILAL MARDIA

Versus

ASST. COMMISSIONER OF I.T.'

Appearance:

1. Special Civil Application No. 316 of 2005
   MRS SWATI SOPARKAR for Petitioner No. 1
   MR MANISH R BHATT for Respondent No. 1
   NOTICE SERVED for Respondent No. 1
2. Special Civil Application No. 317 of 2005
   MRS SWATI SOPARKAR for Petitioner No. 1
   MR MANISH R BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 21/04/2005

COMMON JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 As both these petitions are interlinked with Tax Appeal No.328 of 2000 they have been taken up for final hearing and disposal together. Rule. Mr.M.R.Bhatt, learned Senior Standing Counsel for the respondent revenue waives service of Rule.

2 In Special Civil Application No. 316 of 2005 the Assessment Year is 1999-2000 while in Special Civil Application No.317 of 2005 the Assessment Year is 2000-2001. Assessments were duly framed under Section 143(3) of the Act on 13th March,2002 and 27th February,2003 respectively for both the years in question. The respondent issued notices under Section 148 of the Act for both the years dated 4th December,2003.

3 As can be seen from the reasons recorded the assessments have been reopened on the ground that interest income arising from debentures was proportionately taxable over a period of six years and hence, there was failure on part of the assessee petitioner in not returning the proportionate interest income for the two years under consideration. Accordingly, interest income to the tune of Rs.48,37,500/- had escaped assessment for each of the year under consideration.

4 The contention of the petitioner is that no income as such has escaped assessment in light of the fact that debentures are prematurely redeemed on 6th July,1998. That once the instruments under which borrowing had been effected are redeemed and the principal amount repaid by the company there can be no question of any interest arising or accruing. Therefore, there was no failure on part of the assessee in not returning the interest income.

5 It is an accepted position between the parties that the controversy for these years would survive only in the event the order of the Tribunal made in assessee's case on 28th October,1999 is upheld, whereby the Tribunal

had directed that proportionate amount of interest income should be brought to tax in each of the years over a period of six years which was the original term for which debentures were floated.

6 Having heard the learned Counsel appearing for the respective parties it is apparent that the impugned notices under Section 148 of the Act dated 4.12.2003 for both the Assessment Years in question cannot be permitted to hold the field in light of the judgment and order made today in Tax Appeal No.328 of 2000. This Court has held that the Tribunal was in error in permitting spread over of interest income over a period of six years in hands of recipient assessee. In these circumstances, once the entire interest income is brought to tax in the initial year viz. year of allotment of debenture the assessee is not entitled to receive any further interest in any of the subsequent years. Therefore, it cannot be stated that any income has escaped for any of the years under consideration. Accordingly impugned notices under Section 148 of the Act for Assessment Year 1999-2000 (Annexure-A) and for Assessment Year 2000-2001 (Annexure-A) are quashed and set aside. The petitions are allowed accordingly. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A.Mehta,J)
Sd/-
(H.N.Devani,J)

m.m.bhatt